IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6260 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JITENDRABHAI G MANKAD

Versus

GIRISH LALBHAI SHAH

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Appearance:

MR ARUN H MEHTA for Petitioners

MR NITIN M AMIN for Respondent No. 1

MR RC KODEKAR for Respondent No. 2

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/02/2001

ORAL JUDGEMENT

Present petitioners-original accused Nos.1 and 2 of Criminal Case No.95 of 1989 has filed the present petition under Sec.482 of Cr.P.C. to quash the criminal case in question and process issued in aforesaid criminal case against them.

2. The facts in short are that a complaint was filed by the original complainant-present respondent No.1 in the capacity of Chairman of Kamal Associates directly into the Court of learned Metropolitan magistrate, Court No.15, Ahmedabad on 24-5-1989 and on receiving the same, learned Metropolitan Magistrate issued process under Sec.156(3) of Cr.P.C. and matter was sent to Ellisbridge Police Station for investigation. The Police Sub Inspector, Ellisbridge Police Station, after investigation, submitted the `B' summary report in the Court on 9-7-1989. The learned Metropolitan Magistrate after enquiry under Sec.202 issued process against the present petitioner under Secs.420, 34 and 114 of Indian Penal Code which is giving rise to file the present petition.

3. Today I have heard learned advocate for the petitioner, Mr.A.H.Mehta, learned advocate for the respondent No.1, Mr.Shalin N. Mehta and learned Addl. Public Prosecutor for the respondent No.2-State, Mr.R.C.Kodekar.

4. Learned counsel for the petitioner, Mr.A.H.Mehta, has made a statement at the bar that during the pendency of this petition, petitioner No.1-Jitendrabhai Gunvantrai Mankad expired on 28-8-1997. This petition, therefore, abates in respect of petitioner No.1 and is disposed of accordingly.

5. Mr.A.H.Mehta has also argued that for the entire controversy which is the subject matter of the criminal complaint, civil suits are also filed in City Civil Court, Ahmedabad in the year 1988 numbered as Civil Suit Nos.4408 of 1988 and 4120 of 1988 and subject matter of the litigation is regarding final plot No.995 of T.P.Scheme No.3, Ellisbridge, Ahmedabad, admeasuring 2420 sq. yards out of which, land admeasuring 625.42 sq.metres with superstructures standing thereon was sold by the petitioners by way of registered Sale Deed dated 6-1-1988 but the remaining plot of land was not sold or transferred in any manner to anybody. So, above two suits for various reliefs have been filed by the petitioners. Petitioners have also taken out Notice of Motion seeking ad-interim injunction which was granted and thereafter, it was confirmed by the Court. Both the suits are pending in the Court and awaiting for final disposal. So though there are civil disputes between the parties, just for the purpose of pressurising the present petitioners for achieving desired results, alleged false complaint was filed which is nothing but to convert the civil dispute into criminal one which is an abuse of the

process of court and is required to be quashed.

6. Mr.Shalin N.Mehta, learned counsel for the respondent No.1-original complainant on the other hand has argued that Court had issued the process under Sec.420 read with Secs.34 and 114 of IPC after applying its mind and, therefore, power under Sec.482 is not required to be exercised in this case at this stage. He has also argued that whatever arguments that have been advanced by the learned counsel for the petitioners are nothing but the defence which will be available to them at the time of trial. According to him, there is no bar in filing criminal complaint though civil disputes are pending between the parties in the Court of law and if filed, the same is maintainable or it does not require to be quashed under Sec.482 of Cr.P.C.

7. The entire controversy is regarding the criminal complaint and the civil suits which are pending and awaiting for final disposal for which, even ad-interim injunction has been granted by the City Civil Court in favour of present petitioners which is made absolute till the final disposal of the suit on 23-6-1989, copy of which has been annexed by the petitioners at page 108. Even the respondent No.1 was directed along with other defendants to give undertaking into the Court and the question of FSI of the plot which was allegedly not sold to the non-trading corporation is involved in both the disputes and it can be decided by the Civil Court. Therefore, for the purpose of harassing and compelling them to settle illegally the FSI in respect of the part of plot of land which is allegedly not sold to non-trading corporation, the respondent No.1 cannot be permitted to convert the civil dispute into criminal one.

8. It is true that if any independent criminal offence is established, then in that case, parties can file criminal complaint though civil suits are pending. But, here in this case, as I have stated earlier, the subject matter of both the suits are one and the same and when Civil Court has already dealt with the matter at the interim stage, original complainant-present respondent No.1 cannot be permitted to misuse the process of Court just to turtle the balance in their favour. The arguments that have been advanced by the learned counsel for the petitioners are not only the defence but they are required to be dealt with at this stage and keeping in mind all aspects of the matter, I am of the prima-facie opinion that the respondent No.1 has tried to convert the civil dispute into criminal one which cannot be permitted

to do so. Therefore, it is a fit case wherein the power under Sec.482 of Cr.P.C. is required to be used for which, no reliance of any judgment is required. Even then, reliance is placed on 1997 (2) G.L.R. 1655 which is the decision rendered by this Court.

9. I am aware that the civil disputes are pending between the parties and therefore, this Court would not like to enter into the discussion of merits and demerits of the matter which may ultimately prejudice the rights of the parties at the time of trial. Therefore, I have not discussed the point in detail and whatever discussion that has been made by this court in this judgment is of a prima-facie nature which may not come in the way of the parties at the time of trial of the civil suits and other proceedings.

10. In view of the aforesaid discussion, the complaint being Criminal Case No.95 of 1989 pending on the file of learned Metropolitan Magistrate, Court No.15, Ahmedabad and process issued on it are hereby quashed. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

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